

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)	
Hearing Officer Notice Soliciting Comments)		
On Whether the Department Should Open)	
An Investigation to Establish an Instate)	D.T.E. 03-45
Universal Service Fund)	
)	

COMMENTS OF
PAETEC COMMUNICATIONS, INC.

In accordance with the Department of Telecommunications and Energy's ("Department") Hearing Officer's Notice ("Notice") of May 29, 2003 in the above-captioned proceeding, PAETEC Communications, Inc. ("PAETEC") respectfully submits these comments.¹

The Notice solicits comments on the necessity for an investigation to establish an instate universal service fund ("State Fund") and is in response to a petition ("Petition") filed by Richmond Connections d/b/a Richmond Networx ("Petitioner") a Commonwealth independent telecommunications carrier.² The Department, in its Notice, requested specific responses to two very pertinent questions on the matter at hand. The first question posed dealt with the statutory authority of the Department to establish a State Fund in the Commonwealth. The second, conditional question asks

¹Hearing Office Notice Soliciting Comments On Whether the Department Should Open an Investigation to Establish an Instate Universal Service Fund, DTE 03-45, May 29, 2003.

² See Petition of Richmond Connections dated March 5, 2003 ("Petition").

whether or not the Department should engage in an investigation to do so if existing law allows. PAETEC agrees with the cursory legal analysis of the Hearing Officer in the Notice in that she correctly concludes that federal statute allows states the authority to establish separate funds. This alone is a sufficient legal basis if such a State Fund were to be established in the Commonwealth. PAETEC also believes that, regardless of laws permitting its establishment, such a State Fund is neither desirable nor necessary. However, like the Department, PAETEC has insufficient information on this matter and any conclusion regarding the necessity of a State Fund, or a fund designed to subsidize an incumbent carrier serving “5 square miles”³ of LATA 126 is mere speculation.

First, PAETEC can find no contravening law that prohibits the Department from establishing a State Fund. In fact, the Notice’s reference to specific state authority derived from federal law to establish a State Fund is, as the Notice pointed out, in the Communications Act of 1934 as amended (“Act”) and is both clear and broad in scope.⁴ PAETEC agrees with the Hearing Officer’s assertion that authority granted to the Department by Commonwealth law is less clear but, regardless, PAETEC believes that the statutory authority to establish a State Fund is present and compelling.

The answer to the second question is far more difficult to answer. Regardless of statutory authority, the actual establishment of a State Fund must be of such compelling public policy benefits as to override the cost impact on the public, the state telecommunications industry, local and state governments as well as the cost of

³ History of Richmond Telephone, www.richmondtelephone.com

⁴ 47 U.S.C, Section 254 (f).

establishing the inherent bureaucratic system necessary to administer and monitor the State Fund. PAETEC believes that the Petitioner will have quite a burden in demonstrating the clear policy advantages of a State Fund. In fact, PAETEC recommends that the Petitioner may serve the interests of all Parties involved in this docket and Massachusetts taxpayer dollars by assuming the cost of an impartial study itself. The objective of the study would be to analyze the Massachusetts telecommunications market and cite disparate market conditions in which a reasonable person could conclude that only the actions of government are warranted to correct an alleged problem.

PAETEC, a contributor and participant in federal and state universal service programs, where applicable, is of the opinion that even explicit subsidies are subordinate to the consumer benefits derived directly from a competitive telecommunications market. PAETEC is of the opinion that state regulators are better served by enhancing pro-competitive market conditions rather than relying on historically flawed subsidy programs. PAETEC highlights the Petitioner's claim that "competition should be promoted in all local telecommunications markets through sources of universal service..."⁵ as contradictory on its face. Until fairly recently, the history of the telecommunications market in the United States is one of protected incumbent monopolies establishing tacit, or even explicit, relationships with governments with promises of provision of universal telecommunications services in exchange for preservation of precious monopoly rent. PAETEC suspects the urge of the Petitioner to establish a renewed source of revenue through subsidy is more consistent with the

⁵ See Petition.

Petitioner's desire to bolster its own weakening balance sheet rather than some ideological desire to enhance the public interest in the Commonwealth. Competition is providing the exact remedy the Petitioner claims is lacking through lower prices, technological improvements and a diverse set of carrier choices for Massachusetts telecommunications consumer even in the rural areas of the western part of the Commonwealth. Nevertheless, PAETEC must acknowledge that everyone has a right to tell his or her story and we think the Petitioner should be given the opportunity to do so.

If the Department determines that the Petitioner has made its case for a State Fund, we would like to advise the Department, perhaps prematurely, on the methodology of implementation of such a fund. Telecommunication subscribers, in the Commonwealth and elsewhere, utilizing interstate service offerings of most domestic carriers have already seen significant increases on their telephone bills resulting from the administration of the federal universal service fund ("USF"). While the administrative agency responsible for the maintenance of the complex federal USF program and the Federal Communications Commission ("FCC") itself do not mandate that carriers pass-through carrier obligations to the federal USF, that is in fact the general practice.

Additionally, should the Department ultimately decide to implement a State Fund, PAETEC requests that the Department follow a revenue and, therefore, competitively neutral mechanism for assessable contributions to that State Fund. PAETEC suggests that the Department follow closely the actions of the FCC as it ponders the points made here in its ongoing dockets dealing with the administration of the federal USF and the

rates carriers pay to one another for use of respective networks to access end-users which are closely intertwined.⁶

In conclusion, PAETEC believes the law allows for the establishment of a State Fund but has not seen convincing evidence of the necessity of a State Fund and, therefore, recommends no formal proceeding be initiated.

Respectfully submitted,

JT Ambrosi
Vice President,
Carrier & Government Relations
PAETEC Communications, Inc.
One PAETEC Plaza
600 Willowbrook Office Park
Fairport, NY 14450
Telephone (585) 340-2631

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⁶ FCC 02-43, FNPRM and R&O in CC Docket 96-45, February 26, 2002; FCC 02-329, R&O and 2nd FNPRM in CC Docket 96-45, December 13, 2002; FCC 01-132